to 23% – in the amount consumers pay for long distance.[11] The same study found statistically significant evidence that CLECs have a substantially higher share of the local exchange market in states where BOC interLATA entry has occurred.[12] As Chairman Powell has noted, "[w]e see a correlation between the process for approving applications and growing robustness in the markets."[13]

Commenters do not dispute that BOC entry triggers lower long distance prices and increased competition in the local market. Nor do they question the public-interest benefits that go along with these results. Instead, they offer speculative scenarios in which these benefits might not occur in the states covered by this Application. This guesswork, however, falls well short of rebutting the well-established presumption that "BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist." *GA/LA Order* ¶ 281.

Price-Squeeze. WorldCom alleges that BellSouth's UNE rates, when considered in conjunction with its retail rates, create a "price squeeze" that precludes competition for residential customers in each of the five states at issue in this Application. *See WorldCom Comments* at 19-20. AT&T makes a similar claim, though it confines its allegation to North Carolina. *See AT&T Comments* at 41-43; *AT&T Lieberman Decl.* ¶¶ 19-31.

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[11] *See* Jerry A. Hausman, Gregory K. Leonard & J. Gregory Sidak, *The Consumer-Welfare Benefits from Bell Company Entry into Long-Distance Telecommunications: Empirical Evidence from New York and Texas* 3 (Jan. 2002), *at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=289851.

[12] *See id.*

[13] *See* Rodney L. Pringle, *Powell Says Innovation Will Drive Telecom Upswing*, Communications Today, June 6, 2001.

These claims defy logic. The evidence in the record makes clear that CLECs are actually in the market and providing service to thousands of residential customers in each of the states covered by this Application. *See, e.g., Stockdale Reply Aff.* Exh. ES-1. That service, moreover, is being provided using all three of the entry vehicles contemplated in the Act, including UNE-P. *See Ruscilli/Cox Reply Aff.* ¶¶ 63-64 & Table 5. WorldCom itself admits that it is offering UNE-P-based service *today* in each of the five states covered by this Application. *WorldCom Comments* at 19. Indeed, while AT&T contends that "BellSouth's UNE rates . . . preclude efficient local entry" in North Carolina, *AT&T Comments* at 59, WorldCom is busy rolling out "The Neighborhood" there,[14] and proudly proclaiming along the way that this UNE-P based residential offering is "profitable every where we sell" it.[15]

AT&T's and WorldCom's price-squeeze claims accordingly crash head-on into the actual evidence of residential competition in each of the five states at issue here. Indeed, it is for precisely this reason that the D.C. Circuit, in remanding the price-squeeze issue to the Commission, pointedly noted that it would be relevant – if at all – only in states that, "[i]n contrast to . . . New York and Texas," are "characterized by relatively low volumes of residential competition." *Sprint Communications Co. v. FCC*, 274 F.3d 549, 553 (D.C. Cir. 2001). The five states at issue here are plainly *not* characterized by low volumes of competition. *See* Letter from Glenn T. Reynolds, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket 02-150 (July 31, 2002) (attaching comparisons of CLEC entry in these five states with section 271-approved

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[14] MCI Press Release, *MCI Welcomes North Carolina to the Neighborhood* (July 10, 2002), *at* http://www.mci.com/about_mci/news_room_index.jsp; Kristi E. Swartz, *MCI Offers Local Telephone Service to North Carolina Residents*, Winston-Salem J., July 16, 2002.

[15] *See* Wayne Huyard, Chief Operating Officer, MCI, *Using UNE-P to Develop a Strong and Profitable Local Presence*, Presentation at the Goldman-Sachs Telecom Issues Conference (May 7, 2002).

states, including New York and Texas). AT&T's and WorldCom's theoretical allegations are thus irrelevant, and the Commission need go no further.

Moreover, even if the evidence of competitive entry did not dispose of the price-squeeze claims, AT&T's and WorldCom's allegations would still fail. In the *Vermont Order*, the Commission set forth a list of factors that proponents of a price-squeeze claim would have to meet in order to make out a claim. For reasons explained previously, BellSouth continues to believe that a price-squeeze allegation is legally irrelevant to the Commission's public-interest determination.[16] Even if the Commission disagrees, however, it is clear that AT&T and WorldCom have failed to meet the factors established in the *Vermont Order*.

The *Vermont Order* explains that, to establish a price-squeeze claim, a commenter must show that a Bell company's UNE pricing "'*doom[s]* competitors to failure'" in the local market. *Vermont Order* ¶ 66 (quoting *Sprint*, 274 F.3d at 554). Such a showing requires, first and foremost, an analysis of the profitability of using *all* entry vehicles to provide *all* communications services to *all* segments of the market. Thus, after *Vermont*, it is not enough to show, for example, that UNE-based service to residential customers is unprofitable. Rather, the Commission has made clear that a price-squeeze analysis that ignores other vehicles – including resale and facilities-based entry – is meaningless. *E.g.*, *id.* Likewise, the Commission has directed commenters *not* to isolate the expected revenues from local residential customers, but rather to evaluate their ability "to leverage their presence in the long-distance or business markets, together with expected net access revenues and savings, into an economically viable residential telephone service business." *Id.* ¶ 71.

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[16] *See* Supplemental Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Georgia and Louisiana at 39-42, CC Docket No. 02-35 (FCC filed Feb. 14, 2002).

On the cost side, the Commission has also made clear that competitors' bare assertions about the internal costs they face will not suffice. *See id.* ¶ 70. On the contrary, commenters that wish to make out a price-squeeze claim must provide, at a minimum, "cost and other data" to calculate "a sufficient profit for an efficient competitor." *Id.*

Finally, the Commission has stressed that a price-squeeze claim must account for the "higher costs of providing residential service" in certain areas of the state, as well as the fact "any difficulty entering the residential market profitably through the UNE-Platform may be the result of subsidized local residential rates." *Id.* ¶ 68. In this respect, the Commission has noted that ample competition in the business segment of the local market will cut against a price-squeeze claim, as it will tend to "erode the subsidies and create pressure to rebalance local rates," thus leading to more competitive opportunities in the residential market. *Id.*

AT&T's and WorldCom's price-squeeze allegations fall well short of addressing the factors set out in the *Vermont Order*. Indeed, WorldCom, while making the expansive allegation that BellSouth's UNE rates cause a price squeeze in each of the five states at issue, fails to engage the Commission's *Vermont Order* analysis in any respect. It declines to address not only the possibility of relying upon other entry vehicles, but also the question whether it can leverage its presence in the long-distance and business markets to provide a "viable residential telephone service business." *Id.* ¶ 71. And the support it provides for its assessment of the internal costs of providing local service is precisely the same showing that the Commission rejected in the *Vermont Order*. *See WorldCom Comments* at 20 & n.4 (citing Huffman Decl. ¶¶ 8-12, attached to WorldCom Comments, *Application by Verizon New England for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7 (FCC filed Feb. 6, 2002)); *compare Vermont Order* ¶ 70 & n.253 (noting that WorldCom's Huffman Declaration

"provide[s] no cost and other data" and accordingly "is an inadequate basis . . . to determine that a price squeeze exists"). Finally, WorldCom says not a word about the existence of high-cost zones and subsidized rates, much less about the prospect for competition in the business sector to erode those subsidies. These failings are perhaps understandable, since WorldCom is *already*, by its own admission, operating profitably in each of the five states under review. In any event, these failings render WorldCom's price squeeze showing wholly insufficient to establish a price squeeze in any of the states under review.

For its part, while AT&T claims to attempt to respond to the analysis set out in the *Vermont Order*, its efforts fare no better. After devoting several pages of comments to disputing the Commission's analysis in *Vermont*, AT&T claims that it nevertheless has engaged in "such an analysis" and, lo and behold, the North Carolina UNE rates are too high to permit entry. *AT&T Comments* at 63.

As an initial matter, however, AT&T's analysis of other modes of entry – including resale and UNE-loop based entry – is cursory and unsupported. First, its analysis of when resale provides a more profitable vehicle than UNE-P is both unexplained and contrary to fact. AT&T simply asserts parenthetically – without providing any meaningful explanation – that it "assumes . . . a resale-based approach where that is the most profitable mode of entry," and it notes that, in North Carolina, resale is *always* "the more optimal competitive entry solution." *AT&T Lieberman Decl.* ¶¶ 15, 29. Yet, as noted above, WorldCom itself is providing "profitable" residential service in North Carolina, *and it is doing so using UNE-P, not resale.* Thus, whatever the factors are that enter into AT&T's analysis of whether UNEs or resale is "optimal," they quite evidently lead to a result that is contrary to what is going on in the real world. This fact alone demonstrates that AT&T's "analysis" is faulty and should be rejected.

Second, AT&T's analysis fails to come to grips with the prospect of using its own switches, in conjunction with unbundled loops, to provide residential service. AT&T dismisses this approach out of hand because, in its view, "carriers cannot rationally invest in switches until they have used UNE-P to build up a customer base." *AT&T Comments* at 65. But CLECs have already deployed switches in North Carolina, and AT&T does not suggest that these switches cannot be used to provide residential service. AT&T also asserts – without elaboration or support of any kind – that BellSouth's hot-cut performance is insufficient to permit it to compete in the residential market. Yet the record evidence demonstrates, beyond legitimate dispute, that BellSouth's performance easily provides CLECs a meaningful opportunity to compete. *See BellSouth Varner Aff.* ¶¶ 193, 197, 201, 205, 209 (Application App. A, Tab K). The Commission has made clear that a price-squeeze allegation must include a coherent and comprehensive analysis of *each* of the entry vehicles available under the Act. AT&T's abbreviated discussion of resale – and its outright dismissal of facilities-based entry – is hardly that.

AT&T offers an equally half-hearted response to the Commission's instruction that proponents of a price-squeeze claim address the possibility of leveraging their presence in other markets to provide a viable residential offering. *See Vermont Order* ¶ 71. Rather than address this issue in any detail, AT&T simply includes unexplained (and very small) "IntraLATA and InterLATA toll contributions that may be available to new entrants." *AT&T's Lieberman Decl.* ¶ 26 & Prop. Exh. A. Equally significantly, AT&T simply ignores the prospect that it could leverage its presence in the business market to provide a "viable residential telephone service business." *Vermont Order* ¶ 71. In both cases, AT&T fails comprehensively to examine, as the

Commission requested, its ability "to leverage [its] presence in the long-distance or business markets." *Id.*

AT&T also ignores the requirement that it provide "cost and other data" to support its estimate of the internal costs incurred in providing local service. *See id.* ¶ 70. To be sure, seizing on the Commission's statement that "the pertinent question here is what is a sufficient profit for an efficient competitor," *id.*, AT&T now asserts that the $10 per-customer figure it offered up previously does in fact represent the costs of an efficient competitor, *see AT&T Bickley Decl.* ¶ 4. But, aside from inserting the word "efficient" in various places in the declaration of Steve Bickley, *see, e.g., id.* ¶¶ 2, 4, AT&T does nothing at all to support that characterization. It certainly does not offer anything remotely resembling the kind of cost study – *i.e.*, the "cost and other data" – that the Commission has said would be necessary to establish the internal costs of "an efficient competitor," and that is routinely required of BellSouth to demonstrate the costs of an efficient provider. *Vermont Order* ¶ 70. Indeed, AT&T offers not a shred of evidence to support its assertions of its internal costs, let alone the magical "efficiency" factor that it claims to have used in its study.

Finally, AT&T flatly ignores the Commission's instruction to address the reality that "any difficulty entering the residential market profitably may be the result of subsidized local residential rates," as well as the prospect that competition in the business market may create pressure to "erode the subsidies" and thereby provide additional competitive opportunities. *Id.* ¶ 68. This oversight is particularly notable given that AT&T focuses its price-squeeze claim on *North Carolina*, where CLECs have already won between 28% and 31% of the local business market. *See Stockdale Reply Aff.* Exh. ES-1. But, rather than engage the question of whether this competitive pressure may, in time, create pressure on the NCUC to rebalance local rates,

AT&T cavalierly states that the NCUC's efforts are irrelevant. *See AT&T Comments* at 62 ("AT&T does not ask the Commission to interfere with (or even comment upon) state policy, but merely to determine whether a price squeeze exists."). The Commission has already stated unequivocally that "[w]e do not believe that it would be in the public interest to deny a section 271 application simply because the local telephone rates are low." *Vermont Order* ¶ 68. Yet that is precisely what AT&T asks the Commission to do.

Aside from its failure to meet the factors set out in the *Vermont Order*, AT&T's price-squeeze analysis is littered with self-serving and erroneous assumptions that render it useless. Thus, for example, AT&T's per-line revenue figure is based on some combination of what it considers to be the rate for BellSouth's basic POTS offering plus one or two individual features and the subscriber line charge. *See AT&T Lieberman Decl.* ¶ 23. Yet where AT&T actually provides residential local exchange service, it provides calling plans that mirror the premium, feature-rich service packages that BellSouth has used in its profit-margin analysis. *See BellSouth Ruscilli/Cox Reply Aff.* ¶¶ 54-55. Indeed, AT&T now promotes its local calling plans by comparing them to BellSouth's feature-rich Complete Choice offering, precisely the offering that BellSouth has used here in its comparisons. *See id.* Exh. JAR/CKC-6 (AT&T promotional mailing).

AT&T makes no attempt to reconcile its actual behavior in the marketplace – which focuses on offering premium plans to high-volume callers – with the implausible and self-serving assumptions that drive its price-squeeze analysis in this proceeding.[17] In addition, while

[17] In the *Rhode Island Order*, the Commission cited a comparison between Verizon's UNE rates in that state and a feature-rich calling plan that mirrors the plan used in the margin analysis included with BellSouth's Application here. *See Rhode Island Order* ¶ 23; *see also Ruscilli/Cox Reply Aff.* ¶ 52.

AT&T includes on the *cost* side of the equation an amortization of the nonrecurring charges it incurs when it purchases a UNE-P, *see AT&T Lieberman Decl.* ¶ 20 & Table 3, it does *not* include a comparable figure for any one-time *revenues* that may be associated with initiating service, *see Ruscilli/Cox Reply Aff.* ¶ 53. For these and other reasons explained in the reply affidavit of John Ruscilli and Cynthia Cox, AT&T's price-squeeze allegation, in addition to being unresponsive to the *Vermont Order*, is simply wrong.

Equally important, the real-world fact is that WorldCom and other carriers are competing for residential customers in these five states. No amount of data manipulation or unsupported and faulty analysis by AT&T should convince the Commission that such competition does not – indeed, under AT&T's argument, cannot – exist.

Performance Incentive Plans. BellSouth's Application established that the SEEM plans in place in the five states at issue here mirror, in all material aspects, the plans that this Commission approved in connection with the Georgia/Louisiana application. *See Application* at 141-43; *see also GA/LA Order* ¶ 291 (the SEEM plans in place in Georgia and Louisiana "provide assurance that these local markets will remain open after BellSouth receives section 271 authorization"). The plans adopted in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina use the same statistical methodology, use the same transaction-based remedy-calculation method, provide for remedy payments both to individual CLECs and to the relevant state regulatory bodies, set a meaningful and substantial cap on BellSouth's financial liability, and provide for annual audits, performance reviews, and a dispute resolution procedure. *See BellSouth Varner Aff.* ¶¶ 212-213.

WorldCom nevertheless disputes the adequacy of BellSouth's plan in South Carolina, on the theory that the SCPSC has suggested that it lacks the authority to impose penalties or fines in

connection with interconnection agreements entered into under the 1996 Act. *WorldCom Comments* at 21 n.5. Unlike WorldCom, however, given that the SCPSC has ordered the plan to be in BellSouth's SGAT, BellSouth believes that the SCPSC does in fact have jurisdiction to enforce the terms of its incentive plan, just as it may enforce other aspects of BellSouth's interconnection agreements. Indeed, the South Carolina commission has stated that, "'by requiring BellSouth to include [its incentive plan] in its SGAT, the Commission ensures that BellSouth will have a legally binding obligation to pay penalties.'" *BellSouth Ruscilli/Cox Reply Aff.* ¶ 67. Moreover, as this Commission has previously recognized, "if the [South Carolina] Commission were to decline to exercise jurisdiction, this Commission may have the authority to act in its place pursuant to section 252(e)." *Arkansas/Missouri Order* ¶ 131. The Commission has also explained that "the performance remedy plan is not the only means of ensuring that [a Bell company] continues to provide nondiscriminatory service to competing carriers. For example, this Commission may address any future failure to comply with the conditions of section 271, pursuant to section 271(d)(6)." *Id.* In short, in the unlikely event BellSouth ceases to provide nondiscriminatory service in South Carolina (or elsewhere), there would be no dearth of remedies.

For its part, AT&T challenges BellSouth's plans in Alabama and North Carolina, on the theory that they are "interim" and subject to subsequent decisions of the Alabama and North Carolina commissions. *See AT&T Comments* at 68; *AT&T Bursh/Norris Decl.* ¶¶ 194-195. But the fact of the matter is that *all* performance plans that this Commission has reviewed in the section 271 context are subject to subsequent state commission decisions. Indeed, the Commission has applauded that very feature, noting that the "continuing ability" of performance plans "to evolve is an important feature because it allows [them] to reflect changes in the

telecommunications industry." *Texas Order* ¶ 425. The question before the Commission – as it has been in every 271 application – is whether the plans in place *today* provide a meaningful incentive to ensure that BellSouth continues to provide nondiscriminatory service. And on that question, there can be no legitimate dispute. The plans in place in Alabama and North Carolina are in all key respects the same plan this Commission has already reviewed and approved. And if, as AT&T appears to fear, those plans are modified in such a way as to call into question BellSouth's incentive to comply with the Act, the Commission can then take appropriate action, just as it can in any other state where the state commission continues to refine the relevant performance remedy plan.

CLEC Orders for BellSouth Long Distance. WorldCom alleges that the Application is not in the public interest because BSLD has a policy of providing "long distance service for BellSouth local customers, not CLEC local customers." *WorldCom Comments* at 6. BSLD has no such policy. On the contrary, BSLD is willing to provide long-distance service to customers of WorldCom and other CLECs, and will do so provided that the parties are able to negotiate the necessary business arrangements. *See BellSouth Dennis Reply Aff.* ¶¶ 10-12 (Reply App. Tab D).

Open Local Markets. Finally, AT&T claims that CLECs have made insufficient inroads into the local market in the five states at issue to warrant a finding that BellSouth's entry into long distance will serve the public interest. *AT&T Comments* at 54. The short answer to this contention, however, is that Congress itself rejected it when it opted for a clear statutory "test of when markets are open," instead of the sort of metric test that AT&T proposes here. *See* 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler); *see also GA/LA*

Order ¶ 14 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance."); *Michigan Order* ¶¶ 76-77.

In any event, as explained in the opening and reply affidavits of Elizabeth Stockdale, AT&T's characterization of the state of competition in the five states at issue is inaccurate. Indeed, while AT&T takes aim primarily at the level of residential competition in the five states, *see AT&T Comments* at 55, the truth is that CLEC residential market shares in the five states at issue are consistent with – and in many cases *exceed* – the residential market shares in other states with 271 relief, at the time applications for those states were filed. *See Stockdale Reply Aff.* ¶ 21. Thus, for example, the residential share of North Carolina – which is the *lowest* of the five states – matches the share in New York at the time of Verizon's application there, and it beats the shares in Missouri, New Jersey, Maine, Vermont, and Connecticut. *See id.*[18] AT&T's claim here – that the five states at issue here have insufficient local competition to warrant long distance relief – simply cannot be squared with the fact that other states with *less* competition have received such relief. The fact of the matter is that, as the Commission has properly recognized, Bell company entry in those states with 271 approval has been extraordinarily beneficial to consumers of both local and long-distance service. The same result will follow in the five states at issue here.

CONCLUSION

For the reasons presented above in conjunction with BellSouth's initial filing, this Application should be granted.

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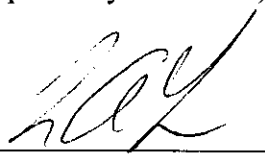
[18] Ms. Stockdale also rebuts AT&T's contention that BellSouth has overestimated the extent of competition in the five states, noting (among other things) that AT&T does not dispute the line counts that BellSouth attributed to it in the Application. *See BellSouth Stockdale Reply Aff.* ¶ 4. Since BellSouth's estimated line counts are simply aggregates of individual CLEC totals, AT&T's silence on this point is telling.

Respectfully submitted,



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